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February 18, 2000

BY HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A306
Washington, D.C. 20554

Re: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

Enclosed for filing are an original and twelve copies of the Reply Comments of SBC Communications Inc. in the above-captioned matter.

Please have one copy date-stamped and returned to me. If you have any questions, please call me at 202-326-7969. Thank you for your assistance in this matter.

Sincerely,

Rachel E. Barkow

REB/sls
Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	
	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

I. Introduction and Summary.

SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell, Nevada Bell, the Southern New England Telephone Company, and Ameritech Corporation (collectively "SBC") argued in their initial comments that ILECs should not be required to provide unbundled loops, transport, or combinations thereof when those facilities would be used predominantly or exclusively as substitutes for special access services used in conjunction with interexchange services ("traditional special access services") or private line services. Nothing in the comments calls into question the overwhelming need for such a limit.

First, this limitation is necessary to preserve the thriving competition in the traditional special access and private line market. As one CLEC points out, competing carriers have been investing in facilities to compete with the ILECs in this market for 15 years and "have built a tremendous amount of fiber, over 30,000 miles nationwide, covering most of the commercial districts in the country."[1] Today, more than 100 CLECs provide these services. They already

[1] Comments of Time Warner Telecom at 1-2 (FCC filed Jan. 19, 2000) ("Time Warner Comments").

have 33% of all special access and private line revenues, up from 21% the previous year.[2] It appears that the only thing that could stop competition in this market is mandatory unbundling itself. By replacing the feverish competition in this market with regulatory prescription, the Commission would deter further deployment of competitive facilities and strand the existing investments of CLECs. As Time Warner explains:

> if TELRIC rates are set too low, even efficient entrants like TWTC would not be able to compete. The risks inherent in prescriptive rate reduction would thus increase the level of uncertainty in the market, and would likely increase the cost of the capital for TWTC and other new entrants.[3]

Second, a restriction on the availability of UNEs in this limited circumstance is necessary to avoid subjecting ILECs and facilities-based CLECs to rate shock. Forty CLECs derive more than 10% of their revenue from special access services.[4] If the Commission allows UNEs to displace special access services, those carriers would face a significant loss of revenues, not because of the entry of more efficient carriers, but because of pure regulatory arbitrage.[5] ILECs, too, will see their access revenues plummet in the absence of a restriction. As SBC explained in its initial comments, special access and private line revenue helps finance affordable, ubiquitous local service and investment in advanced services.[6] The migration of these revenues from CLECs and ILECs to IXCs and their large business customers will come at the expense – not inure to the benefit – of consumers.

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[2] *See* Peter W. Huber & Evan T. Leo, Special Access Fact Report prepared on behalf of Bell Atlantic, BellSouth, GTE, SBC, U S WEST at 6 (FCC filed Jan. 19, 2000) (attached to USTA Comments) ("*Special Access Report*").

[3] Time Warner Comments at 19.

[4] *Special Access Report*, Appendix A.

[5] *Id.* at 19-20.

[6] Comments of SBC Communications Inc. at 15-16 (FCC filed Jan. 19, 2000) ("SBC Comments").

Third, allowing unlimited use of UNEs to displace traditional special access and private line service would conflict with the deregulatory goals of the Telecommunications Act of 1996 ("1996 Act" or "Act"). Just recently, the Commission established a mechanism for incumbents to obtain greater pricing flexibility because of the huge competitive in-roads in this market.[7] A switch to TELRIC would preempt this initiative, substituting regulatory fiat for market-based rates. Moreover, it would effectively delegate to states the responsibility of setting interstate access rates.

Not a single commenter in this proceeding refutes these policy considerations. Indeed, the CLECs that are actually providing special access and private line services over their own facilities, such as Time Warner and Intermedia, filed comments that corroborate the sound policy reasons for preventing special access arbitrage.[8]

Predictably, the IXCs oppose any restrictions on loop and transport UNEs. Eager to reap a huge windfall from special access arbitrage, they argue that the Commission lacks authority under section 251(c)(3) to prevent the conversion of special access services to UNEs. Their cramped view of section 251(c)(3), however, is unsupportable. And, they conveniently ignore or dismiss other provisions of the Act that unambiguously confer authority on the Commission to prevent special access arbitrage.

That these arguments lack credibility is underscored by the fact that, just two years ago, Sprint argued that the Commission *could* and *should* "as a matter of policy," prohibit requesting

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[7] *See* Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*").

[8] *See* Time Warner Comments at 19 (noting that permitting CLECs to use UNEs solely to provide dedicated and special access services would undermine incentives to invest in new facilities and would likely create market distortions); Comments of Intermedia Communications Inc. at 3-4 (FCC filed Jan. 19, 2000) ("Intermedia Comments") (observing that compelling public policy concerns raised by a large reduction in ILEC special access revenue, and a corresponding decrease in universal service support, reinforce the need for a restriction on the use of loop/transport combinations).

carriers from using UNEs to provide switched access to customers to whom the carrier did not also provide local exchange service.[9] Specifically, Sprint asserted that such a restriction was necessary to prevent UNE arbitrage from "short-circuit[ing] the transition to cost-based [access] rates" and upsetting the balance struck among access charges, universal service, and local competition.[10] Today, Sprint no longer acknowledges the Commission's "discretion" in this area.[11] Instead, it now claims "there is no sustainable basis for concluding" that the 1996 Act "would permit the ILECs or the Commission to prohibit IXCs from using UNEs in lieu of special access facilities, or for that matter, switched access facilities when it is technically feasible to do so."[12] This about-face may be predictable, in light of Sprint's pending merger with MCI WorldCom; but it is hardly convincing. More to the point, Sprint and other IXCs must manufacture reasons why the Commission *cannot* impose a use or availability restriction on UNEs because they have so little to say about why the Commission *should not* impose such a restriction.

As SBC and others demonstrated in their comments, the Commission has ample authority to establish a restriction on the use of UNEs to displace traditional special access and private line services. Moreover, the Commission need not even rely on a use restriction since it indisputably may restrict the *availability* of UNEs to that end. And, as the comments demonstrate, there are compelling policy reasons for the Commission do so. The commenters that argue against such a use or availability restriction seek nothing more than an opportunity to engage in regulatory arbitrage that will retard facilities-based competition, short-circuit the Commission's

[9] Comments of Sprint Corporation at 2 (FCC filed Oct. 2, 1997).

[10] *Id.*

[11] *Id.* at 7.

[12] Comments of Sprint Corporation at 1 (FCC filed Jan. 19, 2000) ("Sprint Comments").

deregulatory initiative with respect to special access services, and transfer to the IXCs revenues that help sustain ubiquitous, affordable local service. The Commission should exercise its unquestionable authority under the Act to prevent these consequences, and thus restrict the use or availability of UNEs to displace access services.

II. The Act Contains Multiple Bases of Authority for the Commission To Restrict the Availability and Use of Loops and Transport UNEs To Provide Traditional Special Access or Private Line Services.

SBC pointed out in its initial comments that the Commission has no fewer than five independent sources of authority in the Act to impose limitations on UNEs. First, the Commission could use its authority under the impair standard in section 251(d)(2) because the market evidence conclusively demonstrates that carriers are not impaired in their ability to provide traditional special access and private line services without access to UNEs. Second, the Commission could rely on section 251(d)(2) wholly apart from the impairment test. The Commission has determined that it may limit access to UNEs under section 251(d)(2), even if the impairment test is satisfied, in order to fulfill the goals of the 1996 Act, which include the promotion of facilities-based competition and deregulation. Third, section 251(c)(3) permits the Commission to impose "just, reasonable, and nondiscriminatory" conditions on the use or availability of UNEs. Fourth, section 251(g) empowers the Commission to impose use or availability restrictions on UNEs to preserve the access charge regime. Fifth, section 4(i) of the Act vests the Commission with broad authority to further the goals of the Act. The commenters that claim the Commission lacks authority to prevent special access arbitrage fail to overcome these express grants of authority.

A. The Commission Has the Authority To Impose an Availability Restriction Under Section 251(d)(2).

Section 251(d)(2) expressly provides that the Commission must consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access *to provide the services that it seeks to offer*." 47 U.S.C. § 251(d)(2) (emphasis added). Thus, section 251(d)(2) unambiguously directs the Commission to consider in its impairment analysis whether there are significant differences among services, which might warrant a finding of impairment with respect to some, but not others. In fact, the Commission has already concluded that this provision permits – indeed requires – the Commission to consider the types of service a competitor seeks to provide in applying its impairment test.[13] In its recent *Line Sharing Order*, the Commission reiterated "that it is appropriate to consider the specific services and customer classes a requesting carrier seeks to serve when considering whether to unbundle a network element."[14] And the Commission has already made service-specific distinctions in determining whether a carrier is impaired without access to UNEs. For example, the Commission concluded that whether CLECs are impaired without access to ILEC circuit switching depends on the use to which the switch is put.[15]

Although the Supreme Court made it quite clear that section 251(d)(2) is a threshold inquiry that must take place before unbundling is ordered,[16] the vast majority of commenters in this proceeding that claim access to UNEs cannot be limited simply ignore section 251(d)(2)'s

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[13] *See* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, ¶¶ 81, 96 (rel. Nov. 5, 1999) ("*UNE Remand Order*" and "*Fourth FNPRM*," respectively).

[14] Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of* 1996, CC Docket Nos. 98-147 & 96-98, FCC 99-355, ¶ 31 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

[15] *UNE Remand Order* ¶¶ 276-281.

[16] *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

impair standard.[17] Of the 12 commenters arguing that the Commission lacks authority under the Act to impose a restriction on UNEs, ten fail even to mention section 251(d)(2) *at all* in their comments.[18] And the remaining two commenters do not conduct a meaningful impair analysis. The General Services Administration ("GSA") cites section 251(d)(2) and concedes that the Commission must consider "whether the failure to provide access to network elements would impair the 'ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.'"[19] But GSA never analyzes whether a CLEC would be impaired without access to UNEs when it seeks to provide special access and private line services. Similarly, MCI WorldCom mentions section 251(d)(2) only to note that the Commission concluded that carriers are generally impaired without access to loops and transport.[20] The Commission did not conduct an impairment analysis for special access and private line services, however, and MCI WorldCom does not engage in such an exercise in its comments. Indeed, not a single CLEC argues that it is impaired in its ability to provide traditional special access or private line services without access to UNEs.

It is easy to understand why the commenters opposing restrictions on the availability of UNEs ignore section 251(d)(2). The market facts conclusively establish that carriers are not impaired in their ability to provision special access and private line services without access to

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[17] *See* Comments of AT&T Corp. (FCC filed Jan. 19, 2000) ("AT&T Comments"); Comments of Cable & Wireless USA, Inc. (FCC filed Jan. 19, 2000) ("Cable & Wireless Comments"); Comments of the Competitive Telecommunications Association (FCC filed Jan. 19, 2000) ("CompTel Comments"); Comments of Global Crossing Telecommunications, Inc. (FCC filed Jan. 19, 2000) ("Global Crossing Comments"); Joint Comments of KMC Telecom, Inc. and Focal Communications Corp. (FCC filed Jan. 19, 2000) ("Joint Comments"); Comments of RCN Telecom Services, Inc. (FCC filed Jan. 20, 2000) ("RCN Comments"); Sprint Comments; Comments of the Telecommunications Resellers Association (FCC filed Jan. 19, 2000) ("TRA Comments"); Comments of Z-Tel Communications, Inc. (FCC filed Jan. 19, 2000) ("Z-Tel Comments").

[18] *Id.*

[19] Comments of the General Services Administration at 10-11 (FCC filed Jan. 12, 2000) ("GSA Comments").

[20] Comments of MCI WorldCom at 1 (FCC filed Jan. 19, 2000) ("MCI WorldCom Comments").

UNEs. CLECs already have one-third of this market, and they are rapidly gaining shares. They gained an additional 12% of the market from 1998 to 1999 alone, bringing their total revenues to $5.7 billion.[21] Their current market share of 33% approximates MCI WorldCom's and Sprint's combined share of the long distance market.[22]

As the Commission noted in the *UNE Remand Order*, "the marketplace [provides] the most persuasive evidence of the actual availability of alternatives as a practical, economic, and operational matter."[23] In this instance, the marketplace provides conclusive evidence – CLECs are not impaired in their ability to provide traditional special access and private line services without UNEs. They are already providing these services without access to UNEs – and with considerable marketplace success.

Just as the IXCs ignore the impair standard, so, too, do they disregard the Commission's stated authority under section 251(d)(2)'s "at a minimum" language. The Commission held in no uncertain terms in the *UNE Remand Order* that, "in addition to the 'necessary' and 'impair' standards, section 251(d)(2) permits us to consider other factors that are consistent with the objectives of the Act in making our unbundling determination."[24] As SBC argued in its initial comments, allowing carriers to use UNEs to replace traditional special access and private line services would be directly at odds with key goals of the 1996 Act. Time Warner underscores the point, noting that "UNEs are primarily designed to encourage facilities-based competition. They are *not* designed to create opportunities for pure arbitrage, especially access charge arbitrage."[25] But that is exactly what unlimited access to UNEs would do here. A shift to TELRIC in this

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[21] *Special Access Report* at 6.

[22] *Id.*

[23] *UNE Remand Order* ¶ 66.

[24] *Id.* ¶ 101.

[25] Time Warner Comments at 2.

competitive market would create "distortions" that would destroy CLECs' incentives to build new facilities. Time Warner states that "a flash-cut to TELRIC-based prices for [the provision of dedicated and special access] services would substantially reduce TWTC's incentive to expand its entry in the 21 markets it has already entered or to invest in network facilities in new geographic areas."[26] The 1996 Act was designed to promote, not dampen, incentives to construct new facilities.

A flash-cut to UNE rates would not only significantly diminish incentives to deploy new facilities, but also would destroy the economic value of existing alternative facilities. If such a cut is mandated, CLECs providing competitive special access/private line services will suffer enormous revenue losses, wholly unrelated to efficiency. Time Warner states that it "would not be able to compete" if TELRIC rates are set too low, even though it is an efficient competitor.[27] In addition to Time Warner, more than 40 other CLECs derive at least ten percent of their telecommunications revenues from special access services. Driving these new competitors *out* of the marketplace is directly contrary to the goals of the 1996 Act.

Requiring ILECs to re-price special access and private line services at TELRIC also would be directly contrary to Congress's de-regulatory goals[28] and the Commission's own stated preference for market-based rates. Just 18 days before it adopted the *UNE Remand Order*, the Commission established a de-regulatory framework for ILEC special access services in recognition of the significant competition for those services. There is no reason to switch game plans now, and the commenters have offered none.

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[26] *Id.* at 19.

[27] *Id.*

[28] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, at Preamble, 110 Stat. 56 (codified at 47 U.S.C. §§ 151 *et seq.*) (the Act's goals are to "promote competition and *reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies") (emphasis added).

In addition, a decision to allow UNEs to displace special access and private line service would amount to a massive diversion of revenues from ILECs and facilities-based CLECs to IXCs and large businesses. Whether or not these revenues contain universal service subsidies, it is clear that they help finance ubiquitous, affordable basic services because, among other things, they contribute to the recovery of overhead costs that are expressly excluded from TELRIC rates under the Commission's rules. In addition, a sharp reduction in the price of special access will concomitantly lower the point at which IXCs decide to use special access in place of switched access service, thereby eroding the universal service subsidies that are currently housed in switched access rates. The Act certainly does not contemplate that UNEs should be used to bestow a windfall on IXCs and large users at the expense of facilities-based LECs and consumers.

Instead of trying to confront these powerful arguments, the commenters simply ignore the Commission's authority under section 251(d)(2) to restrict the availability of UNEs. But the Commission cannot ignore its obligation under section 251(d)(2), and the facts make it clear that a restriction on the availability of UNEs to displace special access and private line service must be imposed under either the impair standard or the Commission's more general authority to restrict the availability of UNEs as necessary to further the goals of the Act.

B. The Commission Has the Authority To Impose a Use Restriction Under Section 251(c)(3), Section 251(g), or Section 4(i) of the Act.

Not only may the Commission restrict the availability of UNEs under section 251(d)(2), it can rely on at least three additional statutory sources of authority to impose a use restriction on UNEs. The Commission can impose "just, reasonable, and nondiscriminatory" conditions on UNEs under section 251(c)(3). The Commission can rely on its authority under section 251(g) to preclude the displacement of its access charge regime by UNEs. And the Commission may take

such actions as are necessary to advance the goals of the Act – which include promoting genuine competition and preserving universal service – pursuant to its plenary authority under section 4(i). The commenters in this proceeding have failed to demonstrate that any of these bases is unavailable to the Commission here.

1. Section 251(c)(3) Does Not Prohibit Use Restrictions.

Commenters opposing a use restriction rely primarily on section 251(c)(3). In particular, these commenters repeatedly assert that section 251(c)(3) requires that UNEs be made available for the provision of "any" telecommunications service without restriction.[29] They suggest, without explicitly so stating, that section 251(c)(3) overrides any availability restrictions that might be imposed pursuant to section 251(d)(2).

Section 251(c)(3), however, does not state that UNEs must be made available for the provision of "any" telecommunications service. Rather, it states that ILECs must provide access to UNEs for the provision of "a" telecommunications service. As SBC explained in its initial comments (and as the IXCs implicitly acknowledge by repeatedly and deliberately mischaracterizing the language of section 251(c)(3)), this is a meaningful difference.[30]

The text of section 251(c)(3) – as it is actually written – does not confer on CLECs the absolute right to use any UNE for any telecommunications service under any circumstance. The provision contains no such categorical language. To the contrary, section 251(c)(3) simply states that UNEs may be used for the provision of "a telecommunications service," and it does not suggest in any way that the Commission is powerless to restrict UNEs from being used to

[29] *See, e.g.*, AT&T Comments at 3-4; Cable & Wireless Comments at 3; MCI WorldCom Comments at 5-6; Sprint Comments at 3-4, 7; Z-Tel Comments at 3-4.

[30] SBC Comments at 19-20.

provide a particular telecommunications service when such use would be contrary to the goals of the Act.

Indeed, the suggestion that the Commission lacks the authority to restrict the use of UNEs flies in the face of the statutory regime as a whole. Section 251 confers on the Commission authority to regulate the terms and conditions under which local markets are open to competition. The Commission is given the responsibility, *inter alia*, to define the universe of network elements, to decide which elements must be made available, to establish rules governing their pricing, and to dictate the other terms and conditions upon which UNEs must be made available. It simply defies common sense to suggest that the Commission is powerless to restrict particular uses of UNEs that are harmful to the goals of the Act and the public interest.

In short, section 251(c)(3) defines the universe of purposes for which a carrier can obtain access to a UNE; it does not, however, prohibit the Commission from limiting access to UNEs in order to preserve the access charge regime pursuant to section 251(g), or to further other objectives of Act, including the promotion of facilities-based competition and market-based pricing of telecommunications services.

Finally, the commenters' reliance on section 251(c)(3) is misplaced for an additional reason. It fails to give meaning to the language in the same provision permitting "just and reasonable" terms and conditions governing access to UNEs. That language necessarily confers on the Commission the right to establish just and reasonable restrictions on the use of UNEs.

AT&T nevertheless argues that "any proposed restriction on a requesting carrier's right to use unbundled network elements to provide exchange access services would directly violate the commands of section 251(c)(3)" because carriers are allowed to use UNEs to provide "any

'telecommunications service.'"[31] According to AT&T, the "just and reasonable" provision requires that the condition be "in accordance with . . . the requirements of this section."[32] Since use restrictions are not in accordance with section 251(c)(3), AT&T argues, they cannot be permitted by the "just and reasonable" clause.

But this sort of bootstrapping just writes the "just and reasonable" clause out of the statute. As already noted, section 251(c)(3) does not say "any telecommunications service," it says "a telecommunications service." There is no reason in the statute why it could not be "just and reasonable" to make available UNEs for some telecommunications services but not others.

The Competitive Telecommunications Association ("CompTel") likewise attempts to bypass the "just and reasonable" language by claiming that it refers only to the "terms and conditions of *access* to the UNE, not to the use of the UNE."[33] This argument is plainly meritless. A restriction on the use of a UNE is just one example of a term or condition on which a UNE is provided. Nothing in the statute suggests that this particular term or condition is somehow prohibited even if it is just, reasonable, and nondiscriminatory.

2. The Commission's Analysis of Use Restrictions in the *Local Competition Order* is Inapposite.

Several commenters rely on the Commission's analysis of use restrictions in the *Local Competition Order*,[34] and the rules implementing that analysis, to support an argument against

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[31] AT&T Comments at 3-4; *see also* Sprint Comments at 7.

[32] AT&T Comments at 3; *see also* Sprint Comments at 7.

[33] CompTel Comments at 11 (emphasis in original).

[34] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ("*Local Competition Order*"), *modified on recon.*, 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utils. Bd v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

use restrictions.[35] These commenters argue that the Commission has already concluded that section 251(c)(3) unambiguously[36] requires incumbents to allow requesting carriers to use UNEs to provide exchange access without restriction.[37] They assert that, as a consequence, there is nothing for the Commission to decide here.

What these commenters ignore, however, is that the Commission's reading of section 251(c)(3) in the *Local Competition Order* – and its rules implementing that interpretation[38] – were improperly colored by the Commission's view that section 251(c)(3) "imposes on an incumbent LEC the duty to provide all network elements for which it is technically feasible to provide access."[39] As SBC pointed out in its initial comments, the Commission's analysis of use restrictions is discussed in paragraph 292 of the *Local Competition Order*.[40] In that paragraph, the Commission explained that it agreed with the Illinois Commission, the Texas Office of Public Utility Counsel, and others that believed that section 251(c)(3) defined the scope of the unbundling obligation and required unbundling wherever technically feasible.[41] Based on this broad view of the unbundling obligation in section 251(c)(3), the Commission stated that incumbents could not impose limitations, restrictions, or requirements on the use of UNEs, and,

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[35] *See, e.g.*, MCI WorldCom Comments at 3-4; AT&T Comments at 4-5; Sprint Comments at 4; CompTel Comments at 9; TRA Comments at 3-4; Cable & Wireless Comments at 3-4.

[36] *See, e.g.*, AT&T Comments at 4 (citing *Local Competition Order*, 11 FCC Rcd at 15680, ¶ 359); Cable & Wireless Comments at 4 (same); TRA Comments at 3 (same).

[37] *See, e.g.*, AT&T Comments at 4-5 (citing *Local Competition Order*, 11 FCC Rcd at 15514-15, ¶ 27, 15634, ¶ 264, 15679, ¶ 356); Cable & Wireless Comments at 4 (citing *Local Competition Order*, 11 FCC Rcd at 15514-15, ¶ 27, 15634, ¶ 264, 15679-80, ¶ 358); TRA Comments at 3 (citing *Local Competition Order*, 11 FCC Rcd at 15514-15, ¶ 27, 15634, ¶ 264, 15679, ¶ 356); Sprint Comments at 4 (citing *Local Competition Order*, 11 FCC Rcd at 15646-47, ¶ 292, 15679, ¶ 356).

[38] Rules 51.307(a) and 51.309(a), in particular, were the byproduct of the Commission's faulty view of section 251(c)(3).

[39] *Local Competition Order*, 11 FCC Rcd at 15640, ¶ 278.

[40] *See* SBC Comments at 27.

[41] *Local Competition Order*, 11 FCC Rcd at 15646-47, ¶ 292.

in light of this view, adopted Rules 51.307(a) and 51.209(a).[42] The Supreme Court rejected the Commission's premise.[43]

AT&T is simply wrong, then, when it states that "nothing has changed" since the *Local Competition Order* that should affect the Commission's interpretation.[44] The Supreme Court has rejected the very foundation upon which the Commission's analysis of use restrictions in the *Local Competition Order* and Rules 51.307(a) and 51.309(a) rest. Accordingly, the Commission's discussion of use restrictions in the *Local Competition Order*, and the rules adopted thereunder, are now irrelevant and commenters' reliance on them wholly inappropriate.

Even if valid, the Commission's rules do not prohibit a use restriction. Rule 51.307(c) requires ILECs to provide UNEs "in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element."[45] But what "can be offered" is for the Commission to determine. Thus, just as the Commission limited the use of circuit switching and the high frequency portion of the loop, it can limit the use of UNEs to displace special access and private line service.

Commenters' reliance upon Rule 51.309(a) fares no better. That rule prohibits incumbents from imposing restrictions on the use of UNEs "that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in a manner the

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[42] *Id.* at 15646, ¶ 292.

[43] *See AT&T v. Iowa Utils. Bd.*, 119 S. Ct. at 736. To be sure, the Supreme Court did not specifically invalidate these rules because their validity was not before the Court. The Supreme Court's holding, however, does call into question the legality of those rules. In any event, even if valid, the rules by their very terms do not prohibit a use or availability restriction such as the one proposed by SBC.

[44] AT&T Comments at 5.

[45] 47 C.F.R. § 51.307(c). *See, e.g.*, CompTel Comments at 9-10; TRA Comments at 5; Cable & Wireless Comments at 4-5; AT&T Comments at 5.

requesting telecommunications carrier intends."[46] This rule on its face speaks to "the manner" in which a carrier seeks to offer a service, not which services may be offered.[47]

Finally, some commenters identify Rule 51.309(b) as supportive of a prohibition on use restrictions because it provides that a carrier purchasing a UNE "may use such network element to provide exchange access services to itself."[48] But, this rule does not preclude the Commission from setting the terms by which the carrier provides exchange access services to itself. The Commission has the authority to qualify this rule by noting that a carrier must first provide local service to the customer before it may provide exchange access services to itself.

3. Commenters Have Failed To Refute the Commission's Authority Under Section 251(g).

IXCs dispute the Commission's authority under section 251(g) to preserve the access charge regime, arguing that this provision "does not apply in any way to the new unbundling requirements of the Act."[49] Section 251(g), however, contains no such qualification. By its express terms, it states that unless and until the Commission rules otherwise, access services shall remain subject to the access charge regime, including the Commission's rules governing "receipt of compensation."

Indeed, the Commission has already acknowledged "the potential tension between existing interconnection obligations, such as access charges, and the new methods of

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[46] 47 C.F.R. § 51.309(a); *see, e.g.*, CompTel Comments at 10; TRA Comments at 5; Cable & Wireless Comments at 5; AT&T Comments at 5.

[47] In any event, if anything, this rule *supports* the ability of incumbents to impose use restrictions because it prohibits such restrictions on the use of UNEs only when such limits would "impair" the requesting carrier. It follows that, if the "limitation[ ], restriction[ ], or requirement[ ] . . . on . . . use" does not impair the requesting carrier, it is permissible.

[48] 47 C.F.R. § 51.309(b); *see, e.g.*, CompTel Comments at 10; TRA Comments at 5; Cable & Wireless Comments at 5; AT&T Comments at 6.

[49] MCI WorldCom at 6; *see also* Sprint Comments at 8.

interconnection mandated by section 251."[50] Section 251(g) gives the Commission the authority to balance these obligations. In fact, the Commission has *expressly* relied on this provision to prevent section 251 from being used to circumvent the access charge regime.[51] And the Eighth Circuit has upheld the Commission's authority to do so.[52] Thus the argument raised by the IXCs with respect to section 251(g) has already been decided. Unquestionably, the Commission may balance support for universal service and any other goals embodied in the 1996 Act against the UNE requirements and strike an appropriate compromise that would prevent carriers from bypassing access charges through UNEs and disrupting the measured course the Commission deemed necessary to safeguard access charges and universal services.[53]

III. The Commission Should Impose a Limitation on UNEs Used To Displace the Access Charge Regime in Order To Fulfill the Policy Goals of the 1996 Act.

As SBC has explained, the policy goals of the 1996 Act support a restriction on the use or availability of UNEs to prevent carriers from bypassing the special access, switched access, and private line regime now in place. First, such a limitation would preserve the thriving competition for special access and private line services by preventing a flash-cut of special access and private line rates to TELRIC. Such a cut would diminish incentives to deploy new facilities and destroy the economic value of existing alternative facilities. Second, the limitation proposed by SBC would promote the deregulatory goals of the Act by allowing market forces, rather than

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[50] *Local Competition Order*, 11 FCC Rcd at 15866-67, ¶ 726. In addition, section 251(i) expressly provides that "[n]othing in [section 251] shall be construed to limit or otherwise affect the Commission's authority under section 201." 47 U.S.C. § 251(i).

[51] *Local Competition Order*, 11 FCC Rcd at 16017-18, ¶ 1044; *id.* at 15864-66, ¶¶ 721, 724; *id.* at 16013, ¶ 1034.

[52] *Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1074 (8th Cir. 1997).

[53] *See also Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 539 (8th Cir. 1998) (upholding the Commission's decision to impose residual per minute charges on originating, rather than terminating, access minutes because "[t]his transitional solution is a reasonable exercise of the Commission's discretionary authority to balance competing statutory goals").

regulatory fiat, to dictate the pricing of special access and private line services. Third, such a limitation would prevent the rapid erosion of access charge revenues and their contribution to ubiquitous, affordable local service. Whether or not special access and private line rates contain universal subsidies, they unquestionably support low-cost consumer rates. For example, they contribute to the recovery of common costs, such as overhead, that are not recovered through TELRIC. A sharp reduction in special access rates, moreover, would lead to a migration of customers from switched to special access service. And there is no contesting that switched access services still contain universal subsidies.

Because public policy overwhelmingly supports such a restriction, those opposing a limit focus the bulk of their comments on spurious legal arguments. When they do make an attempt to advance a policy rationale, the weakness of their position is obvious.

AT&T, for instance, claims that the Commission should permit UNEs to be used for all purposes, including the displacement of special access service, because carriers will not invest in alternative special access facilities until "there is a clear understanding of when the Commission will end its support of non-economic pricing."[54] But if CLECs are afraid of entering the special access market because of the possibility that above-cost rates will be driven to cost, they surely would not enter after the Commission prescribed a TELRIC rate for that market. AT&T has it exactly backward: the rule it seeks would *kill* competition in special access, not promote it.

AT&T's premise – that CLECs are avoiding the special access market because of regulatory uncertainty – is also demonstrably wrong. As the *Special Access Report* elucidates, competitive access providers have been entering this market since 1984[55] and now have one-third of the special access and private line service market. They are rapidly gaining more

[54] AT&T Comments at 9.

ground, as evidenced by their increase in market share from 21% to 33% from 1998 to 1999. In this competitive environment, it is preposterous to suggest that investment is on hold until the Commission shifts to TELRIC rates. The market facts support only the opposite conclusion.

Moreover, competitive access providers such as Time Warner and Intermedia have amply demonstrated that, far from dampening incentives, a use or availability restriction for UNEs as a substitute for special access is essential to preserve and promote investment in alternative facilities. These carriers advocate a use restriction in this proceeding precisely because, absent such a restriction, the value of their investment in alternative facilities would be reduced sharply by a flash-cut to TELRIC rates for special access and private line services.[56] In Time Warner's own words, "[A] flash cut to TELRIC-based prices for these services would substantially reduce TWTC's incentive to expand its entry in the 21 markets it has already entered or to invest in network facilities in new geographic areas."[57]

Other commenters argue that rates for special access and private line services are not yet at cost and that UNEs must be available to drive them there.[58] This argument ignores the considerable competition to which special access services are already subject. As RCN points out, ILECs have been reducing their special access rates to respond to competition, and they have been "voluntarily set[ting] rates in the trunking basket for special access services below the

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[55] *Special Access Report* at 2.

[56] Intermedia Comments at 3-4; Time Warner Comments at 19.

[57] Time Warner Comments at 19.

[58] *See, e.g.*, AT&T Comments at 8-10; Cable & Wireless Comments at 9. MCI WorldCom and the Telecommunications Resellers Association make a somewhat different point: they argue that, because of access pricing flexibility, a use restriction will enable incumbents to engage in price squeezes. MCI WorldCom Comments at 16; *see also* TRA Comments at 9-10. But this complaint is really with the new pricing flexibility regime, and the Commission has already concluded that the new pricing flexibility granted to incumbents will not allow them to engage in exclusionary behavior such as price squeezes. *See Pricing Flexibility Order*, 14 FCC Rcd at 14261-62, ¶ 77. Any challenge to that determination is not properly raised in this proceeding.

relevant price cap for quite some time."[59] It is precisely because this market is so competitive that the Commission recently established a framework by which incumbents may obtain special access pricing flexibility.[60]

This being the case, the real issue is not whether prices are or are not yet cost-based. The issue is the *process* by which special access prices will be determined now and in the future. Allowing competition to continue to develop would result in efficient, cost-based pricing of special access services. In contrast, permitting conversion of traditional special access circuits to UNEs will stop competition in its tracks. It would embed a regulatory-based pricing regime in favor of cost-based pricing, in direct contravention of the most fundamental purpose of the 1996 Act.

Some commenters concede that the special access and private line services market is competitive, but argue that this only shows that a limit is not necessary to protect universal service.[61] But those who claim that special access rates do not contain universal subsidies[62] disregard the considerable difference between market-based prices and TELRIC prices. For example, market-based prices permit recovery of the common costs of the network that are not recovered through TELRIC. Moreover, TELRIC pricing is not based on an ILEC's actual costs; it is instead based on regulators' estimates of the forward-looking costs of a theoretically most-efficient competitor. ILECs, however, are business entities that must recover their *actual* costs, not the *theoretical* costs of a hypothetical competitor. To the extent special access revenues do not recover an ILEC's actual costs, those costs must be borne by the ILEC's retail customers. In

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[59] RCN Comments at 8 n.7; *see also* Time Warner Comments at 20, n.14.

[60] *See Pricing Flexibility Order*, 14 FCC Rcd 14221.

[61] *See, e.g.*, RCN Comments at 7-8.

[62] *See, e.g.*, AT&T Comments at 13; MCI WorldCom Comments at 9; Cable & Wireless Comments at 7; CompTel Comments at 5-8; Global Crossing Comments at 4; TRA Comments at 7.

this sense, special access conversion transfers costs from the largest users and IXCs to consumers. Thus, irrespective of whether special access rates contain universal service subsidies, the revenues from those services help finance ubiquitous, affordable local services for consumers across the country. If special access services are re-priced at TELRIC, IXCs and large business customers will reap a huge financial windfall, while residential and small business customers are left to make up the shortfall.

Universal service will suffer in a second respect: any flash-cut from tariff to UNE rates will lower the point at which carriers decide to use special access in place of switched access, which indisputably does contain universal service subsidies. As a result, the universal service subsidies from these switched access customers will be lost.[63] The commenters opposing a use restriction cannot, therefore, persuasively argue that universal service will be unscathed simply because special access rates do not contain universal service subsidies.

IV. The Commission Should Adopt a Restriction that Prevents Carriers from Using UNEs To Provide Traditional Special Access or Private Line Service Unless the Carrier Also Provides Local or xDSL Service to the Customer.

It is clear, then, that the Commission can and should adopt a restriction on UNEs that are used for special access and private line services. The only remaining question is how to formulate the limitation. SBC proposed a standard in its initial comments that would promote the goals of the Act and could be readily administered. In order to prevent carriers from engaging in pure arbitrage, SBC urged the Commission to limit the availability of UNEs when they would be used predominantly as substitutes for traditional special access or private line

[63] *See* Global Crossing Comments at 4 ("rates for special access services do not contain the level [sic] implicit subsidies that are found in switched access rates"); *Cf.* Comments of the Public Utility Commission of Texas at 2 (FCC filed Jan. 19, 2000) ("Texas PUC Comments") ("Historically, Texas intrastate switched access charges have contained implicit universal service support. To the extent that incumbent LECs' switched access revenues might be eroded through the use of UNEs, implicit universal service support could also be reduced.").

services. Specifically, SBC suggested that the Commission limit access to UNEs where the facilities are not used predominantly for local or xDSL services.[64]

A. The Proposed Standard Will Further the Goals of the Act.

SBC's proposed standard permits carriers to obtain UNEs for loop/transport combinations used primarily to provide local dialtone service to consumers. Thus, its standard will promote competition in the local market. Indeed, by insisting that carriers provide local service to the customer as a condition for substituting UNEs for special access, the Commission will create additional incentives for carriers to enter local markets, further bolstering competition for local service. At the same time, this requirement will prevent carriers from engaging in pure regulatory arbitrage that will stifle competition in the special access and private line services market. Thus, competition in *all* markets will benefit.

SBC's standard also permits providers of xDSL service to convert their special access services to UNEs, thereby facilitating the provision of advanced telecommunications services to residential and small business customers. Unlike other advanced services provided over the telephone network, xDSL service is a mass market service. It "mak[es] it possible for ordinary citizens to access various networks, such as the Internet, corporate networks, and governmental networks, at high speeds through the existing copper telephone lines."[65] As SBC explained in its comments, the Commission's impairment analysis with respect to loops and interoffice transport in the *UNE Remand Order* focused on mass market services. The Commission concluded that ubiquitous access to unbundled loops and interoffice transport was necessary for CLECs to provide such services. While SBC does not agree with this conclusion, its proposal to allow

[64] *See* SBC Comments at 2.

[65] *Line Sharing Order* ¶ 2.

special access conversions for the provision of xDSL service is consistent with the Commission's conclusions and analysis.

Some commenters, on the other hand, suggest that SBC's proposal is too limited and that the Commission should allow carriers to convert special access and private line service to UNEs whenever a carrier uses those facilities to provide *any* advanced service, including frame relay and asynchronous transfer mode ("ATM").[66] These commenters ignore the enormous difference between advanced services that serve medium and large businesses and those that serve the mass market. In the *UNE Remand Order*, the Commission concluded that "competitors are actively deploying facilities used to provide advanced services to serve certain segments of the market – namely, medium and large business – and hence they cannot be said to be impaired in their ability to offer service, at least to these segments without access to the incumbent's facilities."[67] Since these carriers are actively deploying advanced services to medium and large business customers *without* converting their special access services to UNEs, they could not possibly be impaired in their ability to provide such services.[68]

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[66] *See, e.g.*, Intermedia Comments at 5, 7; Joint Comments at 4; GSA Comments at 12.

[67] *UNE Remand Order* ¶ 306.

[68] "Switched multi-megabit data service . . . and frame relay service are high-speed data telecommunications services built upon packet-switching technology. These services are widely offered to business customers for high-volume usage." Public Notice, *Common Carrier Bureau Solicits Comments On Proposed Modifications to ARMIS 43-07 Infrastructure Report*, DA 98-484, AD File No. 98-23, ¶ 4 (FCC rel. Mar. 11, 1998). "Corporate customers represent the single-largest customer segment of the frame relay market, accounting for 74.8% of total frame relay revenue in 1999 and 83.0% in 2004." International Data Services, *U.S. Frame Relay Services: Market Share and Assessment, 1999-2004*, at 10 (Nov. 1999). *See also* Report, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 14 FCC Rcd 2398, 2470 (Appendix A) (1999) ("T1 [and] frame relay . . . are primarily offered to business customers."). "Corporations are currently the dominant ATM customer segment, accounting for 57.5% of total ATM revenue . . . . ISPs, because of their need for high speed and QoS-enabled aggregation capabilities, will continue to leverage ATM-base backbones." International Data Corp., *ATM Services Market Share and Assessment, 1999-2004*, at 11-12 (Dec. 1999); *see also id.* at 7-8 (ATM "[c]ustomer expansion . . . will be driven primarily by increased penetration into the corporate and ISP segments.").

SBC's proposal includes xDSL service, however, because of its potential for reaching "residential and small business customers."[69] The Commission has concluded that "residential and small business customers . . . to date, have not had the same level of access to competitive broadband services as larger businesses."[70] The Commission believes that xDSL service is critical in narrowing that gap.[71]

B. Administrative Concerns are Overstated.

Some IXCs suggest that any restriction on the use or availability of UNEs would be impossible to implement and provide opportunities for abuse. These arguments are nothing more than a transparent attempt to throw roadbloacks in the path of a just and reasonable result. There is no reason why appropriate restrictions on the availability or use of UNEs could not be implemented and administered properly and reasonably efficiently. Indeed, the industry's experience in implementing the *Supplemental Order* should provide valuable insight on how best to fashion and effect an appropriate limitation.

MCI WorldCom argues, however, that a use restriction will put CLECs at a competitive disadvantage because "ILECs refuse to allow CLECs to combine leased UNEs with access services they purchase from the ILECs."[72] Carriers currently do not possess the right to combine UNEs with access services.[73] MCI's request that the Commission require such contributions is

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[69] *Line Sharing Order* ¶ 4. *See also* Cable Services Bureau, FCC, *Broadband Today* at 20 (Oct. 13, 1999) ("DSL is quickly emerging as an economic solution to provide high speed Internet access to end users – both residential and small to midsized businesses.").

[70] *Line Sharing Order* ¶ 35.

[71] *Id.*

[72] MCI WorldCom Comments at 17.

[73] For example, the Texas PUC considered and rejected arguments by AT&T that SWBT had an obligation to connect unbundled elements to existing access services. Instead, the Texas PUC ordered the following language in SWBT's interconnection agreement:

> AT&T may combine any unbundled Network Element with any other element without restriction. *Unbundled Network Elements may not be connected to or*

an issue with broad implications that transcend this proceeding. This is not an issue upon which the Commission sought comment, and MCI's insubstantial three sentence argument does not offer an adequate basis for the Commission to consider fully the implications of this matter. The stray observation of one commenter does not make this the appropriate forum for deciding this important question.

In any event, MCI's request that the Commission expand the scope of this proceeding to the issues not raised in the *Fourth FNPRM* seems to assume that there is a sound legal and policy basis for distinguishing among the loop and transport components of a special access circuit when, in fact, there is no such basis. As discussed above, carriers are not impaired without access to any of the constituent parts of the special access circuit, including the loop. CLECs have one-third of this market already and are rapidly gaining even more ground. Equally telling, not a single CLEC in this proceeding has made a claim that it is impaired in its ability to provide special access without *any* part of the special access circuit, including the loop. Thus, the loop and transport components of a special access circuit should be treated the same: if they are used predominantly to provide local or xDSL service, they can be purchased as UNEs; otherwise, they cannot be. If the Commission adopts such an approach, MCI's request will be moot.

Even if the Commission were nevertheless to decide that the loop and transport components of a loop/transport combination should be viewed differently, carriers seeking to connect UNE loops to special access transport services would have to effect such interconnection pursuant to the Commission's Expanded Interconnection rules. In the *Local Competition Order*, the Commission expressly preserved its *Expanded Interconnection* regime, holding that such

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> *combined with SWBT access services or other SWBT tariffed service offerings* with the exception of tariffed collocation services.

Arbitration Award, Docket Nos. 16189 *et al.*, App. B, at 17 (Tex. P.U.C. Sept. 30, 1997) (emphasis added).

requirements were not displaced by the interconnection requirements of the 1996 Act.[74] That regime governs the means by which CLECs may interconnect their facilities with ILEC access services. If carriers are permitted to connect UNEs to ILEC access services, those rules ought to apply to those connections.[75] Thus, whatever the Commission's general rule, it is clear that a CLEC seeking to combine a UNE loop with access services would, at the very least, be required to obtain collocation in order to do so.

V. The Commission Should Not Permit Requesting Carriers To Use Switch/Transport Combinations as a Substitute for Switched Access.

Most of the commenters in this proceeding focus their attention on special access and private line service. They mention switched access only to point out that the Commission's lack of authority to impose a use restriction would apply to switched access as well.[76] But, as discussed above, the Commission does have the authority to impose a restriction on UNEs. And the Commission should exercise that authority to prevent the loss of switched access revenues that would result from a flash-cut conversion of switched access to UNEs. The commenters that claim universal service would be unaffected by UNE bypass focus almost exclusively on *special* access in making this claim.[77] As discussed above, this view is mistaken. More to the point, however, these carriers cannot dispute that switched access revenues are a significant source of universal service funding. Those revenues would be devastated by regulatory arbitrage unless the Commission imposes a limit. Thus, the Commission should not allow carriers to use

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[74] *Local Competition Order*, 11 FCC Rcd at 15808-09, ¶¶ 610-612.

[75] Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, ¶ 101 (1997) ("[W]e interpret the phrase 'own telephone exchange service facilities,' in section 271(c)(1)(A), to include unbundled network elements that a competing provider has obtained from a BOC.").

[76] *See, e.g.*, AT&T Comments at 15; Cable & Wireless Comments at 8-9; Sprint Comments at 3-5.

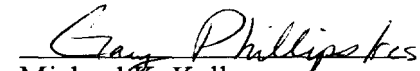
[77] *See, e.g.*, AT&T Comments at 12-13; CompTel Comments at 3-8; GSA Comments at 8-9; MCI WorldCom Comments at 12; RCN Comments at 5-8; TRA Comments at 7.

switch/transport combinations as a substitute for switched access service where that carrier does not also provide local exchange services to the end user.

CONCLUSION

The Commission can and should adopt a limiting standard to promote local competition and deregulation and to preserve the access charge regime and universal service.

Respectfully submitted,



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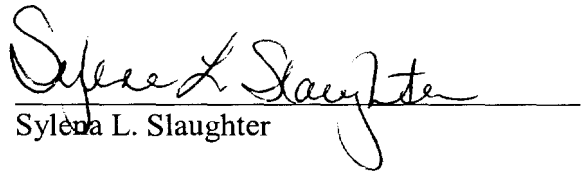
February 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2000, I caused copies of the Reply Comments of SBC Communications Inc. to be served upon the parties listed on the attached service list by hand delivery (indicated by asterisk) or by first-class mail, postage prepaid.



Sylvia L. Slaughter

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DOCKET NOS. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, AND 17781

ARBITRATION AWARD

DOCKET NO. 16189	§	PUBLIC UTILITY COMMISSION
PETITION OF MFS COMMUNICATIONS	§	
COMPANY, INC. FOR ARBITRATION OF	§	OF TEXAS
PRICING OF UNBUNDLED LOOPS	§	
DOCKET NO. 16196	§	
PETITION OF TELEPORT	§	
COMMUNICATIONS GROUP, INC. FOR	§	
ARBITRATION TO ESTABLISH AN	§	
INTERCONNECTION AGREEMENT	§	
DOCKET NO. 16226	§	
PETITION OF AT&T COMMUNICATIONS	§	
OF THE SOUTHWEST, INC. FOR	§	
COMPULSORY ARBITRATION TO	§	
ESTABLISH AN INTERCONNECTION	§	
AGREEMENT BETWEEN AT&T AND	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY	§	
DOCKET NO. 16285	§	
PETITION OF MCI	§	
TELECOMMUNICATION CORPORATION	§	
AND ITS AFFILIATE MCIMETRO ACCESS	§	
TRANSMISSION SERVICES, INC. FOR	§	
ARBITRATION AND REQUEST FOR	§	
MEDIATION UNDER THE FEDERAL	§	
TELECOMMUNICATIONS ACT OF 1996	§	
DOCKET NO. 16290	§	
PETITION OF AMERICAN	§	
COMMUNICATIONS SERVICES, INC. AND	§	
ITS LOCAL EXCHANGE OPERATING	§	
SUBSIDIARIES FOR ARBITRATION WITH	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY PURSUANT TO THE	§	
TELECOMMUNICATIONS ACT OF 1996	§	

DOCKET NO. 16455	§
PETITION OF SPRINT COMMUNICATIONS	§
COMPANY L.P. FOR ARBITRATION OF	§
INTERCONNECTION RATES, TERMS,	§
CONDITIONS, AND PRICES	§
FROM SOUTHWESTERN BELL	§
TELEPHONE COMPANY	§
DOCKET NO. 17065	§
PETITION OF BROOKS FIBER	§
COMMUNICATIONS OF TEXAS, INC. FOR	§
ARBITRATION WITH SOUTHWESTERN	§
BELL TELEPHONE COMPANY	§
DOCKET NO. 17579	§
APPLICATION OF AT&T	§
COMMUNICATIONS OF THE	§
SOUTHWEST, INC. FOR COMPULSORY	§
ARBITRATION OF FURTHER ISSUES	§
TO ESTABLISH AN INTERCONNECTION	§
AGREEMENT BETWEEN AT&T AND	§
SOUTHWESTERN BELL TELEPHONE	§
COMPANY	§
DOCKET NO. 17587	§
REQUEST OF MCI	§
TELECOMMUNICATIONS CORPORATION	§
AND ITS AFFILIATE, MCIMETRO ACCESS	§
TRANSMISSION SERVICES, INC. FOR	§
CONTINUING ARBITRATION OF CERTAIN	§
UNRESOLVED PROVISIONS OF THE	§
INTERCONNECTION AGREEMENT	§
BETWEEN MCIM AND SOUTHWESTERN	§
BELL TELEPHONE COMPANY	§
DOCKET NO. 17781	§
COMPLAINT OF MCI AGAINST SWB FOR	§
VIOLATION OF COMMISSION ORDER	§
IN DOCKET NO. 16285 REGARDING CABS	§
ORDERING AND BILLING PROCESSING	§

I. SUMMARY OF PROCEEDINGS

On June 13, 1997, and May 30, 1997, AT&T Communications of the Southwest, Inc. (AT&T) and MCI Telecommunications Corporation and its affiliate, MCIMetro Access Transmission Services,

APPENDIX B
AT&T v. SWBT ISSUES

Issue No. 8. Maintenance: Automated Testing

AT&T shall include its proposed language:

Attachment 6: UNE

Section 11.3 Cross connects to the cage associated with unbundled local loops are available with or without automated testing and monitoring capability. If AT&T uses its own testing and monitoring services, SWBT will treat AT&T test reports as its own for purposes of procedures and time intervals for clearing trouble reports. When AT&T orders a switch port, or local loop and switch port in combination, SWBT will, at AT&T's request, provide automated loop testing through the Local Switch rather than install a loop test point.

Issue No. 9. Combinations of Element, Services and Facilities

AT&T shall include SWBT's proposed language as modified below:

Attachment 6: UNE

Section 2.2 AT&T may combine any unbundled Network Element with any other element without restriction. Unbundled Network Elements may not be connected to or combined with SWBT access services or other SWBT tariffed service offerings with the exception of tariffed collocation services. This paragraph does not limit AT&T's ability to permit IXCs to access ULS for the purpose of originating and/or terminating interLATA and intraLATA access traffic or limit AT&T's ability to originate and/or terminate interLATA or intraLATA calls using ULS consistent with Section 5 of this attachment. Further, when customized routing is used by AT&T, pursuant to Section 5.2.4 of this Attachment, AT&T may direct local, local operator services, and local directory assistance traffic to dedicated transport whether such transport is purchased through the access tariff or otherwise.